Report on the Asia-Pacific Regional Seminar for Trade Union Organizations on Contract Labour
New Delhi, India 21-25 April 1997

Background
1. The ILO Bureau for Workers’ Activities (ACTRAV), ILO, Geneva organised the Asia-Pacific Regional Seminar for Trade Union Organizations on Contract Labour in New Delhi, India from 21 to 25 April 1997. It was attended by 20 senior level trade union officials from national trade union centres in the Asia-Pacific Region and representatives from International Trade Secretariats.

2. The Seminar had four objectives:
   (i) to assess the extent of contract labour and to identify the problems resulting from contract labour with regards to employment and working conditions;
   (ii) to examine the potential for effective regulation through law and practice;
   (iii) to illustrate the importance of the Freedom of Association and the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) for contract workers;
   (iv) to assist trade union organizations to develop policies and strategies for protecting the interests of contract workers.

3. As contract labour is a technical item for first discussion during the 85th Session of the International Labour Conference to be held between 3 and 19 June 1997, this seminar also served as a preparatory meeting aimed at enhancing the ability of the trade unions to be more active and effective in relevant discussions at the Conference.

4. Mr. U.H. Flechsenhar and Mr. M. Sebastian from the Bureau for Workers’ Activities (ACTRAV), Mr. V. Egorov from the Labour Law and Labour Relations Branch (LEG/REG), ILO, Geneva, Mr. D.P.A. Naidu, ILO South Asia Multidisciplinary Advisory Team (ILO-SAAT),
New Delhi, and Mr. A. Navamukundan, Malaysia, Dr. Voravidh Charoenloet, Thailand, Mr. Vasant Gupte and Prof. K. N. Vaid, India participated as resource persons.

5. The programme of the Seminar included presentations of case studies/background papers, discussions and group work. Six case studies covering construction, public sector, plantations, textile, garments and food beverage were presented. The ILO Questionnaire on Contract Labour and the proposed Conclusions for ILO instruments on Contract Labour and the possibilities for extending the scope of trade union activities to protect and promote the rights and interests of contract workers were also considered.

6. The Seminar was conducted in English.

Opening Ceremony

7. The opening ceremony was attended by a total of 60 persons, including invited guests from the Friedrich Ebert Stiftung (FES), International Trade Secretariats (ITSs) and the International Confederation of Free Trade Unions (ICFTU). Mr. Werner K. Blenk, Director, ILO Area Office for India and Bhutan, Mr. A. S. Oberai, Director, South Asia Multidisciplinary Advisory Team (ILO-SAAT), New Delhi, Mr. U.H. Flechsenhar, Deputy Director, Bureau for Workers’ Activities (ACTRAV), ILO, Geneva and Dr. Lakshmidhar Mishra, Secretary, Ministry of Labour, Government of India, spoke during the Opening Session.

8. In his opening remarks, Mr. Werner K. Blenk said that contract labour is a complex phenomenon and it includes workers who work in non-standardized employment situations. Contract workers suffer from severe disadvantages because they are paid lower wages, have longer working hours and work under hazardous and unhealthy working conditions. Trade unions face enormous challenges in organizing the contract workers and in influencing governments to make adequate legal provisions for their protection.

9. Mr. Oberai, Director, ILO-SAAT, New Delhi, referred to contract workers’ increasing prominence in employment in many countries in Asia-Pacific region. In the wake of the economic liberalization and structural adjustment policies being pursued in most countries of the region, contract work seems to be one of the most preferred arrangements of employers. The employers prefer this arrangement
because in addition to greater labour market flexibility, it helps them to reduce labour costs, achieve higher productivity and get around labour laws which they consider excessive. Under this changing employment scenario, a noticeable shift of labour force is thus taking place from the organized sector to the informal sector. The inevitable consequence for contract workers is loss in terms of wages, job security, social and economic benefits and deterioration in employment and working conditions. Since contract workers are often considered more productive and economical, there is now an increasing tendency in many countries to employ contract workers in government establishments and large enterprises. This trend in the labour market poses a challenge for developing policies and laws which would ensure that contract workers get their legitimate benefits, namely labour rights, wages, social security and improved working and living conditions.

10. There is a need for massive campaign against exploitative practices inherent in the system of contract workers utilization. Specially designed workers’ education programmes can help provide necessary information on the nature of workforce exploitation associated with various forms of contract workers and the methods and strategies for combatting them. Mr. Oberai hoped that the Regional Seminar will provide important insights and assist workers and trade unions to promote and protect the interests of the contract workers.

11. Mr. Flechsenhar, welcomed the participants and observers on behalf of the ACTRAV, ILO, Geneva. He highlighted the need for International Labour Standard on contract workers, primarily in view of the growing ill-effects of structural adjustment policies on this vulnerable group of workers. As trade and investment grow from globalization of the economy and liberalization of international trade, the benefits of liberal trade and investment policies should be distributed equitably.

12. Mr. Flechsenhar pointed out that there is a growing apprehension among workers that globalization is encouraging governments to lower labour standards. Very often the desire of governments to attract investment has made them dilute or fail to enact measures intended to protect the welfare of workers or to turn a blind eye to infringements of legislations.
13. Due to new information and communication technologies, the globalization of economic activities, the internationalization of decision making processes and the disappearance of global barriers known as “the iron curtain”, we are in the midst of a process where decisions in one country or region affect those in another country directly. The economic phenomenon of “beggar your neighbour policies” takes effect in most regions with the well-known short-term advantages and the long-term disastrous effects. The liberalization of international trade and the globalization of the economy is being sold to us as something that increases productivity, does away with the rigidities of the labour markets hence freeing workers from unwanted regulations, improves quality and quantity of production, enhances foreign direct investment by multinational enterprises and hence increases employment, improves trade and balance of payment. In short, it promises prosperity and well being for everybody.

14. The World Bank in its report 1995 “Workers in an Integrating World” made numerous references to the benefits that nations, regions and individuals will be able to enjoy by way of economic growth and prosperity as they integrate their economies. There is no doubt that trade and investment improves the welfare of workers all over the world. However, this can only be achieved if the gains are distributed equitably among the various stakeholders.

15. A global economy needs commonly accepted rules of the game, based on shared values. Without such rules and values, fair competition will degenerate into cut-throat competition and it is the common person whose throat will be cut and whose modest livelihood lost.

16. The agenda item VI of the 85th Session of the ILC is aimed at introducing a set of international instruments which are intended to protect the interest of contract workers. Mr. Flechsenhar expressed the hope that all concerned namely, employers, government and trade unions would cooperate in adopting the proposed international standard on contract labour which will ultimately promote balanced socio-economic development.

17. Mr. Umraomal Purohit, General Secretary. Hind Mazdoor Sabha (HMS), spoke of the need for social mobilization for creating a conducive atmosphere for adoption of the proposed international
labour standard on contract labour. He highlighted the growing insecurity of workers due to a shift in employment from organized to informal sectors. According to him, organizing the contract workers involves a number of practical difficulties because of the negative attitude of the employers and due to the non-cooperation of workers, arising from fear of victimization. In the case of contract workers, the dependency and helplessness is such that workers rarely question whatever wrongs are done to them by the employers. Nevertheless, he agreed that trade union efforts at organizing the unorganized contract workers would provide the basis for further progress in this regard.

18. Dr. Lakshmidhar Mishra, Secretary, Ministry of Labour, Government of India, pointed out that significant transformations are taking place in the labour market due to technological revolution, economic reforms and organizational and structural changes. This has reversed the one enterprise-one employer formula and has given rise to out-sourcing in which a portion of the work may be carried on in the premises of the main enterprises, while a major portion of the work may be parcelled out. Higher productivity and reduced administrative costs are cited as important reasons for taking recourse to contract workers’ arrangements. India has passed a number of labour legislations, but, contract workers remain largely unprotected. However, recent Supreme Court judgements are likely to influence the labour laws and regulations in a significant manner. For instance, in Gujarat Electricity Board, Thermal Power Station, Ukai versus Hind Mazdoor Sabha in Civil Appeal No. 5497 of 1995, the Supreme Court held that the existing legislation has a lot of benevolent intentions, but it has not provided any relief for the concerned workmen. In the event of abolition of contract, the workmen are in a worse situation since they can neither be employed by the contractors nor is there
any obligation on the principal employer to engage them in his establishment. However, the Industrial Adjudicator has the jurisdiction to change the contractual relationship and make new contracts between the employer and the employees under the Industrial Disputes Act. Depending upon the facts of the case, the Industrial Adjudicator can direct the principal employer to absorb the workmen of the contractor.

19. Dr. Mishra expressed the hope that the Supreme Court judgements will have a positive bearing on the national labour laws and regulations and will improve the condition of contract workers.

20. The opening session was concluded with a vote of thanks to the speakers by Mr. G. Frabhakar, General Secretary of Bharatiya Mazdoor Sangh (BMS), India.

Session I: Case Study

21. The participants elected Mr. John Sutton and Ms. C. Angoh as Chairperson and Vice-Chairperson respectively and Mr. Naidu as the Secretary for the Seminar.

Contract Labour in the Public Sector in India

22. This study by Mr. Bagaram Tulpule and Mr. Vasant Gupte examined the phenomenon of contract workers in the following public sector undertakings: steel, engineering, coal, ports and docks, railways, civil aviation, chemical, defence, municipality and road transport. Mr. Vasant Gupte made the presentation.

23. The study found that utilization of contract workers is an established practice covering the entire public sector and that over the past decade, it has become more extensive. The study revealed that jobs being done through the contract system are of diverse nature. The type of work normally done through contractors are: (1) construction; (2) maintenance and repairs of buildings; (3) loading and unloading; (4) cleaning and sweeping of premises; (5) security services; (6) catering services; and (7) manufacturing of parts and accessories. Most of these jobs are permanent in nature.

24. The study found four patterns of utilization of contract workers, namely (1) contractors supply workers only; (2) contractors do the assigned work through their own workers using company’s premises,
machinery, equipment, etc.; (3) contractors get the work done; and (4) work gets done through contract with workers’ cooperatives.

25. The study noted that the proportion of contract workers in the public and the private sectors increased from 1.9 per cent in 1980-81 to 3.10 per cent in 1989-90 in the public sector, and from 6.1 per cent in 1980-81 to 13.5 per cent in 1989-90 in the private sector.

26. Contract workers in the public sector: (1) earn in majority of the cases 40 to 70 per cent lower wages than that of the regular workers; (2) do not have service benefits like Provident Fund (P.F.), Employment Security Insurance (E.S.I.), gratuity, etc., except to some extent where they are organized; and (3) do not have job security.

27. The contract labour system in the public sector grew largely because of: (1) low labour cost and no liability of other benefits; (2) ease of hire and fire of workers; (3) non-unionization in most cases and easy maintenance of discipline due to workers’ fear of losing their job; (4) the existence of small contractors who are not covered by the Contract Labour (Regulation and Abolition) Act 1970; (5) inadequate implementation of the Act; (6) indifference and laxity in the working of the Central and State Advisory Committees set up under the Act; (7) lengthy litigation through High Courts and the Supreme Court even after the government’s notification under the Act prohibiting employment of contract workers in specific organizations on specific kinds of work; (8) restrictions on industrial courts/tribunals ordering abolition of contract system; (9) ban on regular recruitment; and (10) outsourcing and sub-contracting.

28. The contract workers are mostly unorganized. At some places, they are organized into unions of regular workers or as independent unions. Wherever strong trade unions emerged, they succeeded in preventing employment under contract workers on specific jobs and in getting the contract workers regularized as regular employers of the principal employer. In this connection, the study especially drew attention to the recent decisions of the Indian High Courts and Supreme Court which allowed contract workers’ unions to demand abolition of contract system and regularization of contract workers.

29. Until very recently, public policy in India did not encourage employment of contract workers except where the nature of work itself required it. Especially where the work concerned was of a
permanent nature and was an integral part of the work of an industrial unit or organization, resort to the contract system was not considered permissible. That was also the view generally taken by Industrial Tribunals and the Supreme Court of India.

30. During recent years, however, it is being argued that to introduce greater flexibility in employment, and to reduce labour costs the practice of giving out parts of work on contract should be adopted more widely. Public sector industries are also adopting this practice. A central issue, therefore, that needs to be examined is whether the earlier policy of restricting proliferation of the contract workers system should continue or should be abandoned in favour of a policy encouraging the system in the name of promoting flexibility of workforce and labour costs reduction even if it implied greater insecurity and exploitation of the workers concerned.

31. Whatever policy is adopted certain kinds of work which are of a limited duration and not integral to the operations of the principal employer will be done through contractors. In such cases, it needs to be examined whether the present arrangements are adequate to ensure that certain minimum norms in respect of wages, working conditions, job security and other related benefits to contract workers are in fact maintained by the contractor. The general view especially among trade unions is that the Contract Labour (Regulation and Abolition) Act, 1970, has not proved effective in achieving its stated aims and has, on the contrary, made things somewhat worse for labour than before.

32. Complete lack of job-security is found to be a major difficulty in the way of unionization of contract workers. Without unionization, the workers are unable to protect their legitimate interests. It needs to be considered what steps should be taken to make it possible for contract workers to organize themselves in trade unions without fear of victimization. The trade unions should react through a multi-pronged strategy of ensuring (a) proper drafting of the law; (b) implementation of the law by actively using the judiciary; and (c) organizing the unorganized contract workers, especially into the unions of regular employees.

33. The disadvantages of insecure employment can perhaps be partly mitigated by introducing suitable decasualisation schemes for contract workers as well as other categories of non-regular labour like
temporary, casual, etc., where the volume of such labour is substantial. This seems to be the case in major public sector organizations. Since in a given centre, the same set of persons presumably work under contractors for fairly long period, it may be possible to maintain a register of all such workers at that centre, require all contractors to recruit their workforce from such registered workers, and require the principal employer to fill up vacancies in the regular workforce from the registered workers by seniority. It may be examined if some such decasualisation schemes can be devised and put in operation where contract and other non-regular employment is pervasive or pronounced.

34. It is very often argued by employers that security of job through regular employment acts as a disincentive for the workers’ productivity. This argument is used by them to justify the contract system. Trade unions should therefore examine the veracity of this position and if found true, should take necessary steps to rectify the same. The study observed that, if the above mentioned central issues are not resolved effectively, the present trend of casualisation of the organized workforce would increase to cover around 80 to 90 per cent in the near future, resulting in the worsening of employment conditions for labour at large.

35. In the active discussion that followed the presentation of the study, the participants and observers reacted by way of several questions, clarifications and remarks about ground realities not only in the Indian context but also with reference to their respective national experience.

36. In relation to a question whether contract workers are used in manufacturing processes, the response was that the contract labour system has spread to several activities beyond the jobs that are specified by the advisory committee of the Contract Labour Act, 1970 in India. A participant was surprised that the study did not find a new system of employment that is rapidly increasing in the public sector, namely: the engagement of technical experts to do piece rate works due to the freeze on recruitment. Another participant drew attention to the increasing farming out of clerical jobs on contract in the Indian public sector in such areas as health, engineering and electricity. In Malaysia, contracting exists in the public sector. Apart from non-perennial types of work, public infra structural work such as roads, dams, etc., are increasingly done through job contracting. As speed for performance and completion of projects is important
there is use of contract workers. Government offices have also been contracting out services like cleaning, security, etc.  

37. One participant observed that abolition of contract workers would negate alternative employment in the context of shrinking formal employment opportunities. Also, casual/contract employment has persisted for long periods extending around 20 to 30 years or even till the death of workers even though Section 10 of the 1970 Act has forbidden contracting of work of permanent and perennial nature. Where the contract workers system is impossible to abolish, a pertinent question to be addressed concerns the provision of benefits accruing to the regular workers to contract workers also.

38. The absence of formal employment relationship between the contractors and the workers was highlighted. There are no records to prove the existence of contract workers. Even in cases where contractors employ more than 20 workers, workers who die due to fatal employment related injury could not be traced to the particular contractor concerned due to the non-maintenance of proper records. The principal employers only maintain a list of contractors and the number of contract workers, but do not maintain a list containing details of contract workers as such.

39. To a question as to whether the contract workers system in India is a union bursting device, Mr. Gupte replied that there is a lot of indirect evidence to that effect.

40. As regards non-implementation of the Contract Labour Act, 1970, many participants agreed that the problems associated with this can be overcome by (a) campaign and agitations for suitable amendment of law; (b) elimination of possibilities to reduce costs through contracting and (c) unification of the trade union movement. All the participants agreed that the negative aspects of contract system can be controlled by law and by right to collective bargaining.

Session II: Case Study

Contract Labour on Plantations in Malaysia

41. This study was carried out and presented by Mr. A. Navamukundan. It dealt with labour utilization in the plantation industry with a view to highlight the predicament of workers,
especially those who are employed through contractors for labour services.

42. Plantations in Malaysia refer to agricultural land exceeding 20 acres in area upon which industrial agricultural operations take place. This industry is tree-crop based and is a producer of primary commodities such as rubber, palm oil, cocoa and coconut. It provides employment to approximately 300,000 workers and is an important economic sector in terms of net foreign exchange earnings. Over time, rubber which is relatively labour intensive has given way to oil palm, which is the major plantation crop today. Both public sector and private sectors are involved in this industry. Privatization of public sector plantations is being carried out.

43. The study focussed on the phenomena of contract workers in the context of the peculiar characteristics of plantation industry. Only 8% of jobs in this industry constitutes executive, administrative and general staff categories, and the rest of employment is manual and semi-skilled jobs which are classified by the employers into:

   (a) one-time jobs that are done once only during each crop cycle, especially during the planting of crops; and
   (b) recurring jobs (eg. weeding, fertilizer application, pests and disease control, general field maintenance work, etc.) that are of a permanent nature.

44. The recurring jobs are further classified according to seasonal fluctuations in yields of crops. Further, the employers also classify these jobs according to skill requirements, gender preference and specific characteristics required of workers such as the ability to work hard in manual occupations conform to strict discipline and willingness to accept subsistence level wages. On the basis of requirements employers indent for the types of workers required through contractors for supply of labour services or designate jobs to be performed through self-employed contractors.

45. The study elaborated on the rationale for the contract system as an established and growing institution in the labour market on the following grounds:

   (i) As the harvesting operations in tree-crops are fairly labour intensive, it is necessary to keep labour costs down to achieve higher profits. In post-independent Malaysia, the development of labour laws, unionization and collective bargaining pushed the cost of direct employment of labour
with a contract of service. The costs incurred involve
recruitment, supervision and control of workers as well as
the performance of specific obligations with regards to
workers’ welfare, namely medical benefits, housing, transport,
social security benefits, employers’ provident fund,
termination and lay-off benefits. The employers have
therefore opted for the employment of workers on a contract
for service basis;

(ii) the demand for primary commodities fluctuates with
international market conditions, and as a result the employers
seek to trim carrying costs of labour, maintain flexibility in
increasing or reducing the number of employees required to
adjust to the production targets and implement payment by
results systems of remuneration which are pegged to the
productivity of the worker and the prices of the commodities
that they produce.

46. Employers prefer a control mechanism through contractors to
regulate the amount of labour required in terms of man days
according to seasonal fluctuations. Since the sustained supply of
workers for the plantation sector from plantation workers’
communities and villages neighbouring plantations are depleted
through competition for labour from public infra structural works
and the manufacturing sectors of the economy, plantation owners in
recent times have resorted to increased use of immigrant workers
through contractors, legally or otherwise. It is estimated that
approximately half of the plantation workers today are immigrant
workers working through such contractors. This recent trend of
utilizing immigrant Indonesian, Thai, Bangladeshi, Burmese,
Cambodian and Filipino workers has been encouraged under the
guise of maintaining economic competitiveness of the industry which
is subject to the economic policy environment of liberalisation,
privatisation and globalization.

47. Mechanization, especially in field evacuation of crop, i.e., taking
the produce to the collection point has redefined jobs and increased
the opportunities for contracting of jobs and as a consequence contract
workers utilization.

48. The legal dimensions in employment recognise direct employees
with a contract of service and contract workers who are employed
on a contract for services. Contract workers can be employed through
contractors for labour services or self-employed. This distinction has implications for enforcement of legislation, vicarious liability and terms implied by statute, by custom and practice or by the courts. The self-employed contractors have the opportunity to pay their taxes in arrears and are usually outside the scope of collective agreements. They are, therefore, able to negotiate higher lump sum payments for completion of jobs. In the case of contract workers, their contractor is liable for all benefits and payments due to the workers. In some cases, they are also bound by collective agreements. These workers are taxed on their income which has to be declared both by the contractor and the workers.

49. The study pointed out how the plantation industry with the culture of contract labour utilization, is infested with several unfair labour practices. While the law is clear in that liabilities hold good as long as there exists a master-servant relationship, the proof for this is difficult to come by. Although the contractor is liable in law, he has adequate effective control over workers to prevent them from seeking recourse through filing complaints in the Labour Court provided for in the Employment Act. Further, as the level of trade union membership amongst contract workers is low, the opportunities for trade unions to intervene on their behalf is limited and in some cases restricted. The various abuses faced by the contract workers are as follows:

(a) Evasion of payment of housing allowance to non-resident contract workers;
(b) evasion of contributions to Employees Provident Fund and Social Security Organization;
(c) some contractors are unable to pay damages or other payments ordered by the Labour Court or Industrial Court;
(d) some contractors abscond without paying wages;
(e) the size of tasks is increased so that a smaller number of workers are employed;
(f) contractors often issue “vouchers” instead of paying wages in cash, so that the workers have to use the “vouchers” to buy goods from shops controlled or run by contractors;
(g) although female workers are also employed, only male workers’ names are registered on the payroll with a view to evading liability to pay maternity allowance;
(h) contractors retain the identity cards and other official personal documents of the workers in order to force the workers to remain in employment;

(i) contracts with workers are terminated periodically so that obligations of employers to provide various statutory benefits to such workers can be evaded. As a result, there is no security of employment for these workers;

(j) contractors measurement of output of workers is tampered to reduce workers’ wages;

(k) some plantation managers prefer the contract system because of personal gains that they can get from the contractors for favours;

(l) since the contractor has to be paid his commission, the actual wages paid to his workers would be lower than market rates; and

(m) exploitation of immigrant workers is severe, especially in the case of illegal immigrants who pay for protection from authorities and accept lower wages with little or no fringe benefits. However, legal immigrant contract workers usually enjoy terms and conditions of employment not less favourable than those enjoyed by the citizens.

50. In conclusion, the study emphasized the following issues which need attention:

(1) The contract system cannot be abolished as it is developed to fulfil a functional need in the plantations. However, in respect of employment where work is of permanent nature, no third party contractor is required. Moreover, the reality is that the perpetuation of the contract labour system will definitely bring about a total deterioration in the terms and conditions of employment, representation of labour, collective bargaining and grievance redressal;

(2) there should be a specific mandatory requirement of registration and licensing of all contractors for labour services with the Ministry of Human Resources so that there is total transparency in the system which will make it easier for enforcement of labour legislations and reduction of levels of abuse of workers’ rights. Also, the impediments for immigrant contract workers to become trade union members
should be removed; and

(3) the current thrust for adoption of market friendly policies in the management of the economy must recognize that labour standards cannot be compromised.

Contract Labour in the Tea Export Processing Industry and the Hotel Trade in Sri Lanka

51. This study was done by Dr. D. Wesumperuma and was presented by Mr. A. Navamukundan. It is an attempt to examine contract labour arrangements which cut through both the formal and informal labour markets. It is in the informal labour market that supply of labour for the expanding demand for contract workers is available. The firms in the regulated labour market draw contract labour, under both labour contract and job contracts, largely from the informal sector. The case study — tea export processing industry and the hotel trade — covers trades in the expanding private sector in the formal labour market which operates in an environment where unionization among permanent workers is high, and where there is protection for their jobs and incomes.

52. The normal employment relationship in Sri Lanka is usually reflected in the monthly contract of employment which is automatically renewed every month unless it is terminated by either party. This is commonly referred to as ‘permanent employment’ in all the sectors. However, outside this established form of normal employment relationship, there exists in virtually all sectors — private as well as public — various forms of ‘non-standard’ or atypical employment.

53. In the case of indirect labour, the principal employer obtains labour through a third party without himself having the workers on his payroll. The use of such indirect labour is understood as contract labour per se, and encompasses mainly three categories as follows:

(1) contract workers through individual intermediaries;
(2) contract workers through agency intermediaries; and
(3) sub-contracting or ‘job contracting’ arrangements whereby established large enterprises contract out the task of producing and supplying certain products and also services
to smaller enterprises.

54. The other categories that constitute direct labour but fall outside the normal employment relationship are as follows:

(1) Fixed term contracts whereby a person is employed for a fixed term without any guarantee that the contract will be renewed on the expiry of the period stipulated, the contract coming to an end by mutual consent at the end of the period;

(2) seasonal contracts which are resorted to in those sectors where employment by its very nature is seasonal; and

(3) casual and temporary employment relationships resorted to by employers irrespective of any casual or temporary need. These direct atypical forms with impermanent nature are not being predominantly used by labour contractors and sub-contractors in all sectors.

55. In the Tea Export Processing Trade, virtually all of the work relating to processing at the export trader such as blending packing, etc., are done by contract labour through job contracting. In the Hotel Trade, all categories of contract and other non-standard forms of labour are in use, with the fixed (short) term contract workers category being the most widely utilized form of non-standard type of labour.

56. The major factors that have governed the increasing incidence of indirect labour or contract labour and atypical labour practices are as follows:

(1) Given the situation of surplus labour in the low and unskilled categories in the unregulated segment of the labour market, the wage levels in this segment are lower, job security is uncertain, and there is a high degree of labour market flexibility. It is this situation the employers in the regulated labour market seek to utilize through the use of contract workers and other non-standard labour arrangements, in their search for labour market flexibility.

(2) Economic liberalization, privatization and globalization policies have contributed to the increasing incidence of contract workers and other atypical labour practices.

(3) There is a growing preference on the part of the employers to concentrate on a restricted level of core activities with the minimum workforce and depend on contract workers for all
types of peripheral activities.

(4) The existing labour laws, especially the laws on ‘hiring and
firing’ of regular workers are viewed by the employers as
very stringent, time consuming and costly.

(5) According to the employers, the present wage determining
system in the modern formal sector, based on a time rate
contributes to high unit cost of labour and low levels of
productivity.

(6) There is large scale absenteeism in the permanent category
of employment.

(7) It is repeatedly pointed out by the employers that frequent
unrest among the organized labour results in disruption of
work and a chain of adverse consequences.

57. The trade unions on their part are concerned about:

(1) the widespread abuse in the system as practised by most
employers; and

(2) absence of sufficient enforcement of labour standards based
on a proliferation of labour laws and regulations.

58. The study also examines the current debate in Sri Lanka on
revision of some of the labour laws that has come about with:

(a) the promulgation of the National Workers Charter in
September 1995 and the follow up with the draft Employment
Relations Act;

(b) the agitation of the employer organizations to amend some
labour laws in their quest for labour market flexibility; and

(c) the concern of the trade unions in this regard.

59. There are two issues in this debate which have direct implications
for contract labour arrangements. First, there is the issue of the
principal employer’s liability in respect of the labour employed by
the sub-contractor; secondly, there are a set of important issues
emanating from the employers’ agitation for the revision of the
Termination of Employment of Workmen (Special Provision) Act
requesting a relaxation of the provisions relating to the termination
of employees.

60. In conclusion, this study made some important recommendations
as follows:
(1) Trade unions need to build and strengthen their workers education capacity to reach workers in contract labour and other atypical employment situations through systematic education and awareness programmes;

(2) there is an absolute need to improve, strengthen and implement an effective system of labour inspection and enforcement by the Department of labour;

(3) a formal system of registration of all contractors and the principal employers who depend on sub-contracting arrangements should be instituted, and such a registration system should be based on a well formulated criteria on issues relating to labour use and working conditions; and

(4) the loopholes in the labour laws which enable some employers to abuse forms of non-standard use of labour, for instance, by getting regular work done through casual, temporary and fixed term contracts should be effectively closed by bringing about necessary amendments to labour legislations.

61. A lively discussion followed the presentation of the above two case studies. The salient points emerged as follows:

(1) The tight labour market situation in Malaysia in certain sectors, (e.g. construction, plantations, services) and rapid economic growth in conjunction with liberalization policies has led to increased casualisation of employment of contract workers, especially the immigrant workers.

(2) The situation of casualization of workforce in Sri Lanka where economic growth is low and unemployment is high has several adverse repercussions on labour standards and quality of life for workers.

(3) The trade union movement is now under extreme pressure everywhere. Most governments are now promoting policies for economic liberalisation. The use of contract workers has promoted casualisation of employment. The social relevance of trade unions is also in question in a rapidly changing employment environment. With increasing de-unionisation and recent change of legislation in favour of individual contracts in certain countries (e.g., New Zealand), the real wages of blue collar (unskilled/semi-skilled) workers have
fallen considerably. Given these trends contract labour and other atypical forms of employment cannot be abolished, but standards can be brought in for their protection. However, these standards must be practical for implementation.

(4) The discussions also focussed on immigrant and migrant contract labour with particular references to the experiences in countries such as Malaysia, Fiji, Australia and India. Immigrant labour is brought into Malaysia because of:

(a) high demand for labour especially in the public infrastructure projects and plantations and service sectors;

(b) in an expanding economy, as low income groups can move up the ladder of income levels, there is a need for labour to do their activities; and

(c) newly emerging medium and large industries have been given work permits to bring in labour that they need. In Fiji, migrant labourers are preferred because they are cheaper and they work long hours compared to local labour.

62. The group recognized that the technology in the first generation industries in most developing countries are obsolete and that its competitiveness can only be maintained if labour costs are kept low and productivity maintained at the optimum level. However, this is only possible if labour costs can be contained and therefore policies to increase the supply of labour through labour contractors and control mechanisms are allowed.

Session III: Case Study

Contract Labour in the Construction Industry in India

63. This study was prepared and presented by Prof. K.N. Vaid, NICMAR, Mumbai. It was based on a survey of 2600 contract workers, working at 77 construction sites, in five major Indian cities, namely: Mumbai, Delhi, Pune, Hyderabad and Visakhapatnam. Besides, the views of 18 contractors and 29 trade union leaders were also included. The discussion that followed the presentation of case study was
enriched by presentation of other country experiences by the participants.

64. The construction industry accounts for about 16 per cent of India’s working population. During 1981-91, the rate of growth of employment in construction was over 7 per cent per year against the national average of 2.3 per cent.

65. In 1995-96, of the estimated number of 12.9 million construction workers in India, 10.7 million were contract workers. The contract workers system in the construction industry is prevalent due to the following facts: (i) construction sector is an aggregate of numerous discrete elements which facilitate contracting, (ii) work is put to tender and awarded to the lowest bidder which also means low profit margins demanding low overheads as well as production costs, (iii) worker requirement is flexible, (iv) work may not be available on a regular basis, and (v) workers themselves may prefer contractual arrangements to be agreeable with the demands of agricultural occupations from which they come. The kingpin of the contract workers system is the Jamadar (labour supplier) who ensures that labour is available to a contractor whenever required and taken away when not required. These layers of contracting and sub-contracting in construction are held together through the system of ‘Peshgi’ or advance. The contract workers system operates in gangs, particularly where the payment is made by measurement of output. Labour gangs are mostly formed on kinship ties of relationships, caste, village — often the same as that of the labour supplier.

66. The construction labour is dominated by young, male, married, illiterate and unskilled workers belonging to scheduled castes, scheduled tribes, backward classes and the Muslim community having high family dependency. About one fourth of this workforce are women. Those under 18 years of age varied from 5 per cent in Mumbai to 22 per cent in Visakhapatnam. The contract workers in the construction industry are the rural migrants who are mostly landless labour and on the brink of starvation in villages. There is no dearth of work in the construction job market which is very large, fragmented and absorptive. There is work for anyone who sought it and for as long as he wanted it. The job market may be of low technology and perhaps relatively lower wages but its employment potential was unlimited. Most workers are employed for at least 25 days a month and for 9 to 12 months a year. Typically, workers joined the
construction industry at a young age, worked for about 20 years in it and then began to shift to other industries or vocations or quit. Only the highly skilled and the totally unskilled workers tended to stay in this industry after the age of 40 years.

67. The study points out that the labour laws legislated for contract workers are, by and large, similar to those covering labour employed in various other industry groups. The problem is not that laws are less or inadequate, but that the laws are not implemented in so far as the contract workers in the construction industry is concerned. The apparent reason for non-implementation is that the laws are not enforced by the administrative machinery concerned. There are certain situations in which laws are very difficult, if not impossible, to enforce and the construction industry presents one such situation.

68. Construction comprises a large number of small firms. Many of these firms are run by former contract workers who themselves did not experience the benefits of the laws and therefore are concerned with only the costs. To a small firm, a legal obligation translates itself easily into a cost. The predictable cost of compliance includes actual money outlays and cost of time in making and filing returns. To such firms, if the cost of discharging an obligation is more than the cost of non-compliance, it would appear rational not to discharge the obligation.

69. It has been further perceived that the quality of both the enforcement and the implementation of labour laws is unlikely to improve in the near future. Contract workers may not have much expectations to gain benefits from labour laws. The primary vehicle for a contract worker to improve his economic and social situation in the construction job market is to acquire skills and become a person with high level of multi-skills. His biggest security lies in skills that he has and acquires. If he has skills, he can dictate his rate of compensation and conditions of work. If he does not possess skills, he will be dictated terms by multiple layers of employers.

70. However, the organized and corporate sector of the construction industry which also engages contractors and their labour, do ensure that their legal obligations as principal employers are met. These firms are unionized and the situation is much better.

71. The wages of contract workers are, by and large, high and paid
The rates of wages paid are generally higher than those prescribed statutorily. But gender discrimination was well entrenched and women workers were paid much less than men workers for similar work. In so far as the provident fund was concerned, contractors managed to so arrange matters that the law was not applicable to them; and where it could not be avoided, contractors paid both their as well as workers’ share. However, the benefits of other provisions of laws did not reach both construction workers as well as the contract workers. Maternity leave and benefits were unknown. Working hours were market driven. Working conditions were of no concern to anyone. Welfare measures were missing. Housing provided was unfit for human conditions. But there were no complaints either from workers or from labour administrators. Contract workers, except those on the sites of large companies, received neither medical care nor compensation in cases of employment injury. Provision for education of workers’ children was absent without exception. Also there were no formal mechanisms for skill formation in workers.

72. The study found that there is no industry wide collective bargaining in the construction industry. Collective bargaining on behalf of contract workers engaged on sites of large companies takes place in a few large, old and profitable companies. Grievance handling procedures are informal. In the corporate sector and large firms, the Model Grievance Handling procedure laid down by the government is followed. The Central Public Works Department (CPWD) and the State Public Works Department (PWD) follow the departmental rules framed for the purpose. There are instances of disputes in the organized sector which are handled through negotiations or with the help of state machinery for adjudication, in the same manner as in other sectors.

73. During the discussions it was pointed out that the following major issues continue to confront contract workers in the construction
industry:

1. The contract workers in the construction industry get only cash income and no non-cash benefit like medical care, maternity leave, provident fund, pension, educational facilities for children, etc. How can the benefit of minimum social security measures be obtained for contract workers in the absence of unionization of contract workers? This raises the point concerning the strengthening of trade unionism among contract workers.

2. Another challenge is to improve compliance of labour laws, particularly when contractors find it expensive and the workers do not have the necessary knowledge of legal provisions and also fail to create pressure for enforcement of law.

74. During discussion it was suggested that it is possible to improve the working conditions of contract workers through better compliance of labour laws. This would require (i) training and motivation of inspectors responsible for enforcement of laws, (ii) simplification of legal procedures, (iii) strengthening the base of trade unions through developing cadres who could network with local resources, (iv) issue of ration cards to migrant contract workers (v) training and education of the workers about their basic rights and for skill upgrading and (vi) extending the benefits of government sponsored welfare schemes.

75. The group acknowledged that the above study was relevant mainly in the context of large cities. In small towns and villages, contract workers receive very low cash income and also no non-cash benefits. The workers remain largely unorganized, because of the fear of losing work and also violent behaviour of contractors. They also need to go to the contractors again and again for payment of wages due to them. It was pointed out by the group that even if there is a major accident, contract workers are often denied the benefits of Workmen Compensation Act, because no record or pay roll of workers' is maintained. It was suggested that the principal employer has the principal responsibility of paying compensation to the affected workers. This would require compulsory registration of all contractors and contract workers and a more transparent law and law enforcement machinery. Labour cooperatives, trade unions and local self-government need to play a more vigorous and positive role in this respect. The group mentioned several occupation specific
difficulties in organizing the contract workers in construction industry, because of the casual and mobile nature of the work. Workers move from one place to another, some times even beyond the state or national borders. Under the circumstances, it becomes difficult to collect membership fee on a regular basis and also to being helpful to the mobile workers in need. In many cases, contract workers work under clandestine arrangements, as the contractors, subcontractors and the contract workers tend to avoid tax, thereby opting out to remain outside the purview of licensing or legal protection. In countries like Malaysian and Singapore where here is a system of registration of migrant contract workers, (who form the majority), the workers themselves do not like to get unionized given their temporary stay in foreign countries for the purpose of earning an income.

76. However, if the laws are clearly defined, transparent and enforceable, extending protection to all kinds of contract workers in construction industry, would prove effective and this would go a long way to improve the condition of contract workers. Also, workers need to be educated and made aware of the benefits of unionization or cooperative action.

Session IV: Case Study

Contract Labour in the Pakistani Garment and Textile Sector

77. This study was prepared by Azra Talat Sayeed, Karamat Ali, Farhat Parveen and Sharafat Ali of PILER, and presented by Voravidh Charoenloet. The basic objectives of this study were to examine the extent, nature and the working conditions of contract labour in the garment and textile industries in six areas in Karachi by means of a sample study of 300 workers. The study shows how labour market flexibility is achieved through a shift from a permanent to a non-permanent, indirectly hired, workforce.

78. The study distinguishes between three types of contract labour:

(1) Fluctuating contract labour: This is resorted to when the work to be done is genuinely of a short term nature. In this case, the principal employer often has a contract for a stipulated period of time with a contractor. This is the form commonly referred to as ‘contract labour.
(2) Circulating contract labour: This is a practice in which a contractor has a number of workers who circulate for different periods of time between different companies. Thus, they have no fixed workplace but end up working at the same kind of job in the same industry.

(3) Permanent contract labour: This is an old practice which has increased in recent years. They are regular workers in a unit who are not registered as permanent employees. Often there is no contractor at all or the contractor has a nominal role where he collects and distributes the wages but otherwise has no contact with the workers.

79. Contractors are dominant in the garment sector, but even then only 16 per cent of the labour in this sector considers itself contracted, whereas 55 per cent calls itself temporary. No visible difference was seen in the working conditions of workers in these different categories.

80. The most common forms of contract labour found in the study are ‘circulating contract labour’ and ‘permanent contract labour’. The latter seems to be prevalent in the weaving sector, and in the garment sector.

81. The study found that numerical and financial flexibility are important in the garment and weaving sectors. Numerical flexibility refers to hours of work, which changes according to requirements. Financial flexibility refers to labour costs through the reduction in the fixed costs of labour by reducing the number of full time permanent workers.

82. Working conditions of contract workers were found to be poor. Conveniences such as canteens and critical services such as medical help were largely absent. The working conditions are poor in the weaving sector. Shift hours in this sector are long. Workers in the weaving and textile sectors also work in continuous shifts. Data on days and hours worked shows exploitation of workers. Data on pay scales reveals low rates of pay. In the garment sector, labour works for as low as Rs. 2 to 4 per hour, carrying out various kinds of piece work. It is obvious that economic hardship forces labour to accept whatever form of work that is available.

83. The contract or temporary labour system has enabled the principal employers to circumvent labour legislation and the rights and benefits due to workers since they are not deemed to be the
direct employees. Workers can be made to work any number of hours per day but they are not paid proper overtime wages when they work beyond the legally stipulated work time. Nor do they get a weekly rest day, sick, casual or annual leave, healthy working conditions, etc., which are specified under the Factories Act, 1934. They are also deprived of compensation in case of injury or disability at workplace, compulsory group insurance, gratuity, compulsory bonus and other benefits under the West Pakistan Standing Orders Ordinance, 1969.

84. Contract labour is further deprived of pension benefits under EOBI and medical benefits under the Social Security Scheme. A major benefit to the employer is that these workers do not have the right to representation since the principal employer refuses to recognize them as his employees. Moreover, contract workers cannot join unions as the law relating to unionization (Industrial Relations Ordinance 1969) requires workers to identify their employers in order for the union to be registered and legally recognized.

85. The increasing deployment of contract labour in every sector and in large, medium and small units of Pakistan’s economy has serious consequences for the trade union movement. The unions find it difficult to represent, protect and promote workers interests because even in unionized enterprises contract labour forms almost 50 per cent of the workforce now.

Contract Labour in the Textile and Garment Sector in Thailand

86. This study was prepared and presented by Dr. Varovidh Charoenloet of Chulalongkorn University, Bangkok. He said at the outset that this study focuses not so much on contract labour but on subcontracting arrangements and subcontract labour in the Thai textile and garment industries; for, it is subcontracting — international and domestic — that essentially characterizes the production organization in these industries.

87. According to the Thai Government Revolutionary Decree 103 issued on March 16, 1972, Article No. 7, the contractor and the subcontractors at every level must share responsibility for the payment of wages, overtime work and wage compensation when employment is terminated and for those workers affected by sickness, death or
accident because the work is related to the employer, and must pay contribution to the Workmen’s Compensation Fund. This also applies in the case of the Social Security Act 1990. However, there are several problems with the non-coverage and non-enforcement of law as follows:

(1) How can we know who is the main contractor as there are many subcontractors and who is the real employer in terms of the origin of work?

(2) There is no law to fix the limits to subcontracting. As there is no registration of subcontractors, it is difficult to check terms and conditions of contracts.

(3) The current practice of the subcontractors to pay according to work done or piece rate with no control on the working hours makes the employer not bound by the necessity to pay the minimum wage or respect the legally specified working hours. There is no regulation or mechanism to fix a fair price for piece rates and hours of work.

(4) It is difficult for the government to enforce the law in relation to small subcontractors, who might consider the labour standards too high for them to be implemented.

(5) When the big firms set up a multitude of subcontractors. The laws relating to labour relations stress the need to identify the employer because the demand or negotiation for wage and welfare improvement must be directly addressed to a definite employer, but this poses the problem of defused demand and negotiation, which does not permit workers to put forward their demands effectively.

(6) When work is subcontracted to home workers, it is difficult to identify the employer. Consequently, workers lose their right to benefit from the Workmen’s Compensation Fund. They receive only piece wages and are not entitled to any
welfare benefits.

88. The integration of the Thai economy into the world economy through export-led growth since the early 1980s has led to the proliferation of small subcontractors: the shop-houses in the city and the diffusion of home workers in the countryside through the putting-out system.

89. There are three options available to Thailand: (i) to shift production out of the country; (ii) to introduce new technology that would facilitate the production of higher quality and value added products; and (iii) to continue to press for flexibility to maintain initial comparative advantage. For the present, there is a persistent trend towards the third solution. Firms tend to apply cost cutting strategy by contracting and subcontracting out production. Thus, firms have resorted to employment of subcontract labour, casual labour and short term contract workers.

90. Through subcontracting and dismissal of workers (such as in the case of the factory of the Eden Group — an Austrian multinational), the strength of trade unions has been weakened. In the age of globalization, the role of state becomes increasingly ineffective in enforcing the labour laws, while their inadequacies accentuate the hardships of the workers.

91. In conclusion, the study emphasized the following points:

1. When contract workers face immediate lay-off, a fund must be set up to assist the workers to pursue legal matters in the court. Laws should be revised so as to increase penalty for employers who do not abide by the law. The law on wage compensation for employment termination needs to be revised so as to reflect the hardship and the necessary period required for workers in order to be reinserted into new employment.

2. The role of trade unions to organize contract workers in the informal sector may be very limited because of dispersion due to subcontracting and high turnover of labour.

3. Industrialization in Thailand has led to the expansion of home workers and piece rate workers instead of wage labour. Currently, about 13 per cent of the labour force in the manufacturing sector is protected by the labour laws and social security schemes. The majority of workers in the small
units of the unregistered economy have been deprived of these benefits although they contribute much to economic growth. Social welfare and protection need to reach these workers.

4. Information on subcontractors needs to be established so as to assist policy formulation regarding fixing the limits to subcontracting, setting up piece rates, working hours and health and safety regulations in the workplaces.

92. The participants felt that there are ambiguities in the definition of contract labour in Pakistan and Thailand. As regards subcontract labour, there is no reason why it cannot be treated as contract labour in so far as (a) there exists indirect economic and managerial dependency along with direct commercial dependency relationship between the employer/contractor and subcontractor; (b) there exists the problem of identifying the principal employer; (c) judicial verdicts as to who is the principal employer are given in favour of the parent company; (d) in the extended subcontract chain, the small subcontractors do not usually identify themselves as employers. However, some participants felt that labour utilized on the basis of commercial relations between firms through job contacting or subcontracting should not be treated as contract labour.

93. Some felt that the distinctions such as (a) employment and non-employment mechanisms of utilizing labour and (b) contract of service and contract for service, can help to eliminate the ambiguity in defining. There seems to be a consensus that the question of definition is an open ended matter and that a clear-cut broad and general definition needs to be worked out. In discussing the links among workers and the trade unions, an opinion expressed referred to cases where there are separate unions for regular, temporary and contract workers, the trade unions are responsible for producing differences and inequalities in access to facilities/benefits among workers. However, it was agreed that trade unions while representing workers’ interests, should not succumb to such differences.

Discussion on the Proposed Conclusions for a Convention and Recommendation on Contract Labour

94. Mr. V. Egorov from the Labour Law and Labour Relations Branch
of the ILO, Geneva, briefed the participants on the ILO’s standard setting procedures. He then proceeded to discuss the ILC 1997 Reports VI(1) and VI(2) on Contract Labour. Mr. D. Justice from the International Confederation of Free Trade Union gave his comments on the proposed ILO Conclusions for a Convention and Recommendation contained in ILC (1997) Report VI(1) and VI(2) on Contract Labour. Based on discussions pursuant to these presentations the participants made the following Conclusions And Recommendations.

Conclusions and Recommendations

95. The Conclusions and Recommendations were based on the following questions which were raised:

(i) What is the extent and nature of contract labour practices in important economic sectors in various countries in Asia and the Pacific region?

(ii) What are the main social and economic factors that contribute to the growth and nature of the non-standard labour arrangements?

(iii) What is the nature of exploitation of contract workers?

(iv) In what ways are contract workers discriminated in terms of working conditions, wages and other forms of remuneration and benefits, including social security benefits, working hours, annual leave, sick leave and other fringe benefits?

(v) What is the status of contract workers in terms of occupational safety and health, training and development activities?

(vi) How is contract labour dealt with in law and practice and the functioning of the major regulatory instruments entrusted with responsibilities to address problems arising from contract labour arrangements? Does the law focus on the major characteristics of the employer-employee relationship, i.e. subordination and dependency aspects of the relationship? Whether the principal labour legislation covers contract workers and provide them necessary protection?

(vii) Does the law and other regulatory instruments provide for effective intervention by relevant authorities on aspects of the substance and practical operations of the work and
working relationship rather than the contracted obligation alone?

(viii) Does the above mechanism if any, provide for labour inspection to ensure proper wages, working conditions, safety and health, social security, etc. to the contract workers?

(ix) How to bring contract labour within employment relationship with particular emphasis on collective labour relations, collective bargaining/agreement and trade union rights?

(x) What is the prevailing pattern of direct or indirect trade union activities and the extent of trade unionization in sectors where contract labour is prominent?

(xi) What are the grievance settlement procedures and distinctions in treatment of contract workers and regular employees, including protection of workers’ rights through judicial proceedings and institutional mechanism for workers’ representatives?

(xii) What are the ambiguities in the triangular relationship involving contractors/sub-contractors and user enterprises in an industrial relations context?

(xiii) What are the responses and perceptions of government, workers and workers’ organizations on the proposed ILO Convention and Recommendation on contract workers, to be discussed for adoption during the 85th Session of the International Labour Conference.

1. Rising Trend Towards Employment of Contract Labour

96. In recent years, there is a global trend towards increased employment of contract labourers in a large number of economic sectors. This could be observed in the private and public sectors and in both the developed and the developing countries. The system of contract labour has been prevalent in agriculture and construction for several decades. But this practice is increasing in significance in other manufacturing and service industries including textile, inland transport, hotel and tourism and in newly emerging economic sectors such as high technology industries.

97. Contract labour is reported as a common practice in plantations in India, Malaysia and the Philippines. In all countries of the region,
the incidence of contract labour in construction industry is reported to be high. In Malaysia, it is said to be over 60 per cent of the industry’s workforce. In India, it is as high as 87 per cent. In both India and Bangladesh, garment and textile sectors employ mostly contract workers. In Pakistan, nearly 16 per cent of garment workers are contract workers. Unfortunately, the incidence of contract labour is reported to be high even in the public sector. In India, it increased from 4.6 per cent in 1980-81 to 8.9 per cent in 1989-90.

2. Factors Influencing the Growth of Contract Labour

98. The increase in the incidence of contract labour can be attributed to several factors. The most important factor influencing the growth of contract labour is said to be economic, as the employers find it less expensive and more productive. The workers also tend to accept it because of inadequate opportunities for regular employment in the market. Besides, economic liberalization, coupled with technological changes have far reaching influence on the growth of contract labour in recent years. Governments seem to be the victims of their own policy, in not being able to provide adequate protection to the contract workers, mainly because of the fear that this would interfere with labour market flexibility. Moreover, absence of a strong trade union movement is equally responsible for the growth of contract labour.

99. Government Policy makers who are concerned about reducing unemployment have tended to either remove or modify restrictions on the use of contract labour with a view to making labour markets more responsive and flexible. Further specialization of production as well as the emergence of new technologies and work organization patterns which result from domestic and international competition, globalization and growing interdependence of economic and financial markets have led to the growth of non-standardized pattern of employment such as contract labour. Economic difficulties which most economies of the region are currently facing, push employers to reduce the labour costs associated with ‘standard employment’ by shifting to non-standard employment. In fact, there is a tendency among many enterprises to follow a strategy of keeping a ‘core’ skilled permanent workforce of regular employees and a ‘peripheral’ workforce of less secure and more disposable contract workers. The rapid expansion of the informal sector has also contributed to the growth of contract labour system in recent years.
In countries with rapid economic growth, e.g. Singapore and Malaysia, labour shortages are often experienced which result in immigrant labour utilization from neighbouring countries. In both Malaysia and Singapore, most foreign migrant workers are employed as contract workers. Moreover, subjective factors like labour market rigidities provoke employers to employ contract workers who are largely unorganized. Employers use contract labour with a view to evading the obligations imposed by labour legislation and collective agreements in terms of conditions of work, including wages and social securities. In addition, fluctuating demands for products and commodity markets makes it necessary for employers to have recourse to contract labour enabling them to adapt them to the characteristics of market economy, induce the employers to adapt to an increasingly competitive and globalized economic environment. Furthermore, shortcomings in the operation of traditional labour market institutions such as public employment agencies which fail to meet enterprise’s short term work force requirements, are partly responsible for the growth of contract labour in several industries. Last but not least, the limited strength of trade union movement is equally responsible for the growth of contract labour in the Asia-Pacific region.

3. Ambiguities in Defining the Legal Nature of Contract Labour

Due to the diversity of non-standard patterns of labour arrangements practised under contract labour, there are many ambiguities in defining the legal nature of contract labour, which has resulted in negative implications over questions of protection accorded to contract labour. In the wake of economic reforms, most employers tend to reduce labour costs by shifting non-standard patterns of employment. Also the job seekers have been forced to take up such atypical employment as the only alternative to unemployment. The borderline position of contract labour vis-a-vis labour and commercial law has further compounded the difficulties for workers since the major regulatory instruments generally used to address the problems arising from regular labour arrangements are contained from effective intervention on behalf of contract labour. The concern of protection of workers interests is viewed as impinging on economic activity.

4. The Concern for Contract Labour

Due to a number of reasons, contract labour has become a
prominent labour issue for workers and workers’ organizations. The main question is whether contract workers enjoy levels of conditions of employment, including wages and benefits similar to those received by employees under regular employment. Recognizing the inequitable, unhealthy and exploitative treatments meted out to the contract workers, the trade unions are concerned about contract labour practices. Trade unions are encouraged that the ILO aims to address this crucial problem from the perspective of possible setting of international labour standards on the subject. In June 1994, the ILO launched an intensive research survey involving 20 countries worldwide, intended to build up a comparative expertise on the conceptual framework of contract labour, its labour market context, definition, consequences for the workers engaged, legal treatment and workers rights. The national survey reports have proved to be an important information source, in building up knowledge necessary to foster standards setting. During its 261st Session, the Governing Body decided to include contract labour as an agenda item of the Conference in 1997.

103. The purpose of any Convention on contract labour should be first to extend protection to those contract workers who lack the most fundamental kinds of protection that workers in regular employment relationships have. Contract workers lack these protections because, they are considered to be involved in a commercial relation. It should also aim at protecting the regular employment relationship upon which all laws and regulations meant to protect workers are based. These protections include the right of workers to organize and to bargain collectively.

104. In view of the fact that contract labour is a complex and multi-faceted phenomenon, it is not always possible to separate all employment relationships from commercial ones. Contract workers are caught in a triangular relationship, involving the worker, the supplier and the user of labour. Under the situation, it is often difficult to determine which party should assume which obligations of an employer. Therefore, the proposed labour standard should provide ways for governments to extend protections to contract workers.

5. Inadequate Legal and Administrative Provisions for the Protection
of Contract Workers’ Right

105. In almost all countries in the region, the existing legal and administrative provisions are highly inadequate to protect the interests of contract labour. In some cases, existing law does not recognize them as workers as there is no system of registering contract labour. In some other cases, law exists, but is not implemented due to weakness of the enforcement machinery. There are enough loopholes and weakness in the law and the systems of labour inspection and administration. Under the circumstances, there is need for appropriate legal and administrative provisions for protection of contract workers’ rights. The ambiguities and loopholes in the law should be removed leaving no scope for violation of law through subcontracting, non-licensing, etc. Moreover, the contract workers should be given equal pay and other benefits which may discourage the use of contract labour by the employers. In the Indian context it was mentioned that law should be amended in line with the recent Supreme Court judgements which provide for absorption of contract workers by the principal employers.

106. It is particularly important to ensure that statutory minimum standards regarding conditions of employment, including health and safety, are applicable to contract workers and there should be sanctions for violation of legal provisions. Besides, appropriate protection against unjustified dismissal should be applicable to contract workers. There should be regular monitoring of contract workers.

6. Role of Trade Unions

107. Trade unions are generally aware of the danger that atypical and precarious employment such as contract labour poses for workers and their organizations. Unfortunately, however, the strength of trade union organizations is not only low among contract workers, but is on the decline. In fact, the growing incidence of contract labour on the one hand and the declining strength of contract labourers on the other, pose a new challenge to the trade unions. Trade unions need to organize the contract workers as they are vulnerable to exploitation. Besides, they need to impress upon the Governments to frame laws that guarantee contract labour all the benefits of an employment relationship and not merely the commercial relationship.
108. Organization of the immigrant and migrant contract workers poses challenges due to lack of interest and education on the part of workers about the need for unionization and collective representation.

7. Role of Government

109. In the wake of economic liberalization, most governments of the region tend to promote labour market flexibility. But the governments have also a responsibility to protect the interests of vulnerable sections of the population, such as contract workers. In fact, enactment of appropriate laws and regulatory measures to provide protection to contract workers is a primary responsibility of the government. Governments have to ensure that there is adequate legislation to protect the conditions of employment of contract labour, including licensing of contractors. If necessary, government should abolish contract labour in specific circumstances, (i) where contract workers are made available by intermediaries, (ii) where hazardous work is performed; (iii) where work affects national security; and (iv) where regular workers tend to get replaced by contract workers. There should be compulsory written contracts of service, covering all conditions of employment and remuneration. Government should also ensure that labour inspection systems are efficient.

8. How ILO Instruments on Contract Labour Can Help?

110. The existing International Labour Standards such as Conventions 87 and 98 provide basic protection to workers, namely: right to organize and to bargain collectively. The proposed Convention being considered for first discussion during the 1997 Session should aim at extending protection to those workers who lack the most fundamental kinds of protection that workers in regular employment have. Contract labour is a multifaceted and complex phenomenon and it is not always possible to separate all employment relationships from commercial ones. Also the national law and practice concerning both employment and commercial relationships varies widely among the member states of ILO. It is possible that the proposed Convention would provide clear guidance to governments on the nature of protection to be extended in respect to the employment relationships of contract workers. This would include (i) extending the employment relationship to contract workers, (ii) providing them equal treatment;
and (iii) industry-specific measures to protect contract workers. The proposed Convention may recognize these ways and measures as a means of achieving the objective of protecting contract workers. The Convention should oblige governments to prevent contract labour from being used for the purpose of avoiding the obligation of the employer under labour law and social security regulations. It should oblige governments to limit or strictly regulate contract labour. Similarly, a recommendation on contract labour should recall the reason for and reaffirm the importance and purpose of the regular employment relationship. It should encourage governments not to allow the employment relationship to be undermined by the employer’s use of contract labour. Also the use of contract labour should not be allowed to interfere with the established collective bargaining structure and industrial relations practices.

Recommendations

1. Forms of the Instrument
In view of the fact that contract workers work under precarious conditions, having no or negligible legal protection, the group felt that it is essential to adopt international labour standards on contract workers. These standards should take the form of a Convention, supplemented by a Recommendation.

2. Preamble
The participants were of the opinion that the Preamble should clearly state that adoption of new standards on contract labour is important with a view to ensuring that contract workers enjoy full protection. However, a lengthy preamble should be avoided.

3. Method of Application
The method of application, as indicated in the proposed Convention, should be in consistence with national practice such as court decisions, arbitration awards and collective agreements.

4. Definition of Contract Labour
The proposed definition of contract labour is quite broad based and was accepted by the group. However, the participants were of the view that the proposed definition could be partially modified to read “pursuant to a contractual arrangement made directly or through intermediary other than regular contract of employment”.
5. **Scope**

The group was of the strong view that paragraph 6 should be changed to delete the second sentence. The group was of the view that activities of private employment agencies should be included in the Convention. The participants were also of the strong view that paragraph 7(b) should be deleted, as this would dilute the spirit of the Convention.

6. **Content of the Proposed Convention**

The group suggested that paragraph 9(2) should be rephrased to be more precise and specific. Particularly, the term adequate in both paras 9 and 10 would require to be changed by more suitable words to convey the spirit behind it. Similarly the term ‘appropriate’ could be misconstrued to mean that some measures could be ‘inappropriate’ as well. Therefore, it should be rephrased to convey the real sense. The word ‘public’ should be deleted from paragraph 12. If possible, the whole paragraph should be included in the recommendation.

7. **Conclusions to a Recommendation**

(i) The group recognised that definitions of sub-contractor and intermediary would be contentious and therefore, additional suitable wording would be necessary and desirable.

(ii) Paragraph 16 (4a) should be revised to read “the extent to which the user enterprise determines when, where and how work should be performed, including working time, place of work and other conditions of work of the contract worker”.

(iii) Paragraph 17, stating that “appropriate measures should be taken to ensure that contract workers are informed, in an appropriate and easily understandable manner, about their pay (including how it will be determined) and their conditions of work ...” should be included in the proposed Convention and not in Recommendation.

(iv) Regarding paragraph 18, participants felt that “equal treatment with employees of the user enterprise” should be rephrased as equal treatment at par with other regular workers. It should also include the word ‘experience along with qualification’.

(v) Paragraph 20 (1) should be read as “contract workers should not be made available to a user enterprise to replace regular
workers and those workers of that enterprise who are exercising their legitimate rights (including right to strike and any form of industrial action). Besides, the word “might” in para 20 (2) needs to be replaced by the term “should”. Paragraph 20 (2) should also include additional clauses, namely,

“(d) where work is of permanent and perennial nature, and
(e) where regular workers tend to get replaced by contract workers”.

(vi) Paragraph 22 should be rephrased to read as “National law and practice should either apportion or fix joint responsibility between the sub-contractor (or the intermediary, as the case may be) and the user enterprise for fulfilling obligations towards contract workers, taking into account the extent of the workers’ dependency on or subordination to them”.

(vii) In paragraph 24(i), the term “might” needs to be replaced by the word “should”.

(viii) The group felt that a large number of contract workers in developing countries are not registered and thus, remain non-visible. Therefore, it may not be possible to extend protection to them, unless there is a compulsory system of registration of such contract workers.

(ix) In paragraph 25, the phrase, “where possible” should be deleted, as this would leave scope for non-compliance, although some member states might have reservations because of lack of adequate infrastructure for the purpose.

(x) In paragraph 26, the term “appropriate” should be changed to convey the real sense and spirit of the recommendation.

8. The definition of contract labour should be made explicit so that if a contractual arrangement (written or oral) is considered to be a commercial relationship by employers through manipulations, even though it is actually similar to those that characterise employment relationship under national law and practice, it should be within the definition of contract labour. In fact, all commercial arrangements undertaken by dependent sub-contractors should reflect the application of minimum labour standards.

9. The participants were of the view that there is need for a separate
paragraph on recommendation, saying that member states should take measures to protect regular employees and established industrial relations as well as collective bargaining practices from being undermined by employers.

10. A view was expressed, saying that either the Recommendation or the Preamble should state the rationale underlying employment relationship and also reaffirm its importance.

Closing Ceremony

111. The seminar proceedings were presented to the participants and adopted. Participants expressed their appreciation to the Bureau for Workers’ Activities of the International Labour Office for the organisation and conduct of the seminar. The technical item of contract labour discussed was considered extremely topical and relevant. The opportunity to discuss this issue with ILO officials and consultants was appreciated. There was general consensus that the six case studies on contract labour which were specifically prepared as background discussion papers for this seminar, have provided them with very useful information and reference for an in-depth discussion together with ILC (1997) Reports VI(1) and VI(2) on Contract Labour. The participants were particularly appreciative of the fact that the seminar was a very useful preparatory exercise for those who will participate in the International Labour Conference in June this year. The participants expressed gratitude for the distribution of seminar related documents and video and expressed the wish that the Workers’ Group of the Governing Body of the ILO and the Bureau for Workers’ Activities will take into consideration the points they have raised with regard to ILC 1997 Agenda item number VI.

112. Mr. Flechsenhar, in his closing remarks thanked the participants and the resource persons for their good work and collaboration. The large number of trade union organizations in the workshop, the very high level at which they were represented, the seriousness and effectiveness with which the issue of contract labour was discussed made the seminar a very worthwhile preparatory exercise for workers’ participation in the tripartite discussions during the forthcoming International Labour Conference. Mr. Flechsenhar also expressed confidence that the Conclusions and Recommendations of the seminar should have a favourable impact on the discussions at the Conference. He concluded by thanking everyone who have helped to make this regional seminar a success.
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Programme

Monday, 21 April

08.30 - 09.30  Registration

09.30 - 10.30  Opening Session

Opening remarks by **Mr. Werner K. Blenk,**
Director, ILO Area Office for India and Bhutan

Address by **Mr. A.S. Oberai,**
Director, ILO-SAAT

Address by **Mr. U.H. Flechsenhar,**
Deputy Director,
Bureau for Workers’ Activities (ACTRAVE)
Geneva

Address by **Mr. Umraomal Purohit,**
General Secretary, Hind Mazdoor Sabha

Address by **Dr. Lakshmidhar Mishra**
Secretary, Ministry of Labour,
Government in India

Vote of Thanks

10.30 - 11.00  Tea/Coffee

11.00 - 13.00  Video presentation :
(1)  *The International Labour Office*
(2)  *Workers’ World*

13.00 - 14.00  Lunch Break

14.00  Seminar objectives and structure

14.15  *Case Study on Contract Labour in the Public Sector Industries in India*

Discussion

16.00  Country Reports
Tuesday, 22 April

09.00  Case Study on Contract Labour in the Plantation Sector in Malaysia

10.00  Case Study on Contract Labour in the Food and Beverages Sector in Sri Lanka

Discussion

13.00 - 14.00 Lunch Break

14.00  Case Study on Contract Labour in the Building and Construction Industry in India

Discussion

16.00  Country Reports

Wednesday, 23 April

09.00  Case Study on Contract Labour in the Textile and Garment Industry in Pakistan

10.00  Case Study on Contract Labour in the Textile and Garment Sectors in Thailand

Discussion

13.00 - 14.00 Lunch Break

14.00  Workshop/Discussion on the ILO’s Questionaire on Contract Labour contained in ILC (1997) Report VI (i) on Contract Labour: illustration and identification of main concerns of workers and workers’ organization

18.00-19.30 Reception for participants

Thursday, 24 April

09.00  Workshop/Discussion on the proposed conclusions for a convention and Recommendation contained in ILC (1997) Report VI (ii) on Contract Labour
13.00-14.00  Lunch Break
14.00  Continuation - Workshop/Discussion on proposed conclusions for a Convention and Recommendation

Friday, 25 April

09.00  Discussion of the findings of the workshop and Adoption of Conclusions
13.00-14.00  Lunch Break
14.00  Evaluation and Closing of the Seminar

Tea / Coffee Break daily at : 10.30-10.45 hrs.  •  15.30-15.45 hrs.
Preface

Employment patterns in a large number of economic sectors have changed drastically in recent years worldwide. One consequence of this change is a substantial increase in the use of contract labour in different economic sectors. Various forms of contract labour are being utilized both in the private and public sectors and in both the developed and developing countries. In addition to some economic sectors such as agriculture and construction where contract labour has been prevalent for many decades, this practice is increasing in significance in other manufacturing and service industries including textile, inland transport and in newly emerging economic sectors such as high technology industries.

Due to the diversity of non-standard patterns of labour arrangements practice under contract labour there are many ambiguities in defining the legal nature of contract labour. This has resulted in negative implications over questions of protection accorded to contract workers. The borderline position of contract labour vis-a-vis labour law and commercial law has further compounded the difficulties for workers since the major regulatory instruments generally used to address the problems arising from regular labour arrangements are contained from effective intervention on behalf of contract labour. The concern for protection of workers interests is viewed as impinging upon economic activity.

Contract Labour has therefore become for a number of reasons a prominent labour issue for workers and workers’ organizations. Their main question is whether or not contract workers enjoy adequate levels of conditions of employment including wages and benefits as received by employees under regular employment.

In order to deal with this issue within the competence of the ILO’s Bureau for Workers’ Activities (ACTRAV) and assist workers and workers organizations to develop policies and strategies for analysing and protecting the interests of contract workers and preventing their exploitation ACTRAV undertook in early 1997 the following initiatives namely; a) it commissioned a number of case studies of specific economic sectors in Africa, the Americas and Asia and the Pacific regions where contract labour is prevalent or on the increase ii) it
used the findings from the studies as background materials for an open minded reflection by workers’ representatives in regional fora. In addition as Contract Labour is an agenda item for first discussion during the 85th Session of the International Labour Conference in June 1997 the case studies and regional seminars would also contribute towards strengthening the interests and collective persuasion of trade unionists and enhance their ability to effectively contribute in relevant tripartite discussions during the Conference.

This “Asia-Pacific Regional Seminar for Trade Union Organizations on Contract Labour” held in New Delhi from 21-25 April 1997 is one such activity. I found the workers’ representatives analysis of the six sector specific case studies and their discussion on a range of factors including especially negative factors associated with the employment through contract labour very frank, educative and appealing. The Bureau for Workers activities has therefore compiled the discussions at the New Delhi Seminar in the present form as a report of the proceedings.

I sincerely hope that this report will contribute to a better understanding of the prominent issue of contract labour from the standpoint of workers and workers’ organizations.

G. QUERENGHI
Director
Bureau for Workers’ Activities
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Geneva

May 1997
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ILO - Asia-Pacific Regional Seminar for Trade Union Organizations on Contract Labour

New Delhi, 21 - 25 April 1997

PROCEEDINGS

Bureau for Workers’ Activities (ACTRAV)
International Labour Office (ILO)